

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT OR TITLE</u>	<u>ENABLING LEGISLATION</u>	<u>CODE SECTION</u>
Code of Practice	§ 81-3526	Ch. 4
Enforcement of Act	§ 81-3533, 81-3534, 81-3535, 81-3536, 81-3537, 81-3539, 81-3540, 81-3541	Ch. 5
General Provisions	§ 81-3501, 81-3503 to 81-3519, 81- 3522	Ch. 1
Information Practices	§ 84-712.05	Ch. 6
Licensure Provisions	§ 81-3527, 81-3528, 81-3529, 81-3530, 81-3531, 81-3539, 81-3540	Ch. 3
Organization, Responsibilities, and Duties of the Board	§ 81-3520, 81-3521, 81-3522, 81-3523, 84-1408 to 84-1414, and 84-712.05	Ch. 2
Certificate of Authorization Application Form	§ 81-3527, § 81-3528	Appendix E
License Application Form	§ 81-3539	Appendix A
Licensee Seal	§ 81-3529	Appendix D
Renewal Notice	§ 81-3531	Appendix C
Temporary License Application Form	§ 81-3539, § 81-3541	Appendix B

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

NUMERICAL TABLE OF CONTENTS

Chapter 1 – GENERAL PROVISIONS .....	1-1
Chapter 2 – ORGANIZATION, RESPONSIBILITIES, AND DUTIES OF THE BOARD .....	2-1
Chapter 3 – LICENSURE PROVISIONS.....	3-1
Chapter 4 – CODE OF PRACTICE .....	4-1
Chapter 5 – ENFORCEMENT OF THE ACT.....	5-1
Chapter 6 – INFORMATION PRACTICES .....	6-1
Appendix A .....	License Application Form
Appendix B.....	Temporary License Application Form
Appendix C .....	Renewal Notice
Appendix D .....	Licensee Seal
Appendix E.....	Certificate of Authorization Application Form

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

## **CHAPTER 1 - GENERAL PROVISIONS**

### **001 Authority**

001.01 The Nebraska Board of Geologists, hereinafter called the "Board", is created by the Geologist Regulation Act, Neb. Rev. Stat. § 81-3501 to 81-3541. Pursuant to Neb. Rev. Stat. § 81-3522, the Board shall from time to time adopt rules and regulations, consistent with the laws of the State of Nebraska, which the Board deems necessary for the performance of its duties.

### **002 Definitions**

002.01 The definitions set out in Neb. Rev. Stat. § 81-3504 to 81-3519, are hereby incorporated by reference into these rules and regulations. In addition, the following definitions of terms shall apply:

002.01A Board means the Nebraska Board of Geologists.

002.01B Consulting geologist means a professional geologist whose principal occupation is the independent practice of geology; whose livelihood is obtained by offering geologic services to the public; who serves clients as an independent fiduciary; who is devoid of public, commercial, and product affiliation that might tend to imply to conflict of interest; and who is cognizant of his or her public and legal responsibilities and is capable of discharging them.

002.01C Contested case means a proceeding before the Board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Board hearing.

002.01D Continuing education means the process of training and developing knowledge related to a profession after licensure is attained.

002.01E Direct supervision means the degree of supervision by a person overseeing the work of another person by which the supervisor has control over and detailed professional knowledge of the work done.

002.01F Emeritus, referring to a geologist, means a professional who relinquishes or does not renew his or her licensure and who is approved by the Board to receive publications and use the honorary title emeritus.

002.01G Ex parte communication means an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

002.01G1 Communications which do not pertain to the merits of a contested case;

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

002.01G2 Communications required for the disposition of ex parte matters as authorized by law;

002.01G3 Communications in a ratemaking or rulemaking proceeding; and

002.01G4 Communications to which all parties have given consent.

002.01H Geologist means a person who is qualified to practice geology by reason of special knowledge and use of the earth sciences and the principles of geology and geologic data collection and analysis acquired by geologic education and geologic experience.

002.01I Geology means the science which includes treatment of the earth and its origin and history, in general; investigation of the earth's solids, including rocks, soils, minerals, fluids, including underground waters, gases, and other materials; and the study of the natural agents, forces, and processes which cause changes in the earth or on its surface; and the application of this knowledge.

002.01J Geology specialty means a branch of geology which has been recognized for the purposes of licensure, including, but not limited to, environmental geology, engineering geology, geophysics, hydrogeology, petroleum geology, mining geology, and structural geology.

002.01K Good character means such character as will enable a person to discharge the fiduciary duties of a geologist to his or her client and to the public for the protection of the public health, safety, and welfare. Evidence of inability to discharge such duties includes the commission of an offense justifying discipline.

002.01L Hearing officer means the person or persons conducting a hearing, contested case, or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

002.01M Occasional part-time, or consulting, services means services not provided by a full-time member of an organization engaged in geology.

002.01N Organization includes a partnership, limited liability company, corporation, or other form of business entity.

002.01O Party means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

002.01P Petition means the initial document filed by or with the Board that sets forth a claim and request for Board action.

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

002.01Q Practice of geology means any service or creative work if the adequate performance of the service work requires geologic education, training, and experience including such services or creative work as geological consulting, investigation, planning, surveying, mapping, and inspection of geological work, and the responsible supervision thereof, the performance of which is related to public welfare or the safeguarding of life, health, property, and the environment; and teaching, including research and service, of advanced geological subjects. A person shall be construed to practice or offer to practice geology if he or she: (1) Practices any branch of the profession of geology; (2) by verbal claim, sign, advertisement, letterhead, or card or in any other way, represents himself or herself to be a professional geologist; (3) through the use of some other title, implies that he or she is licensed under the Geologists Regulation Act; or (4) holds him or her out as able to perform or does perform any geologic service work recognized by the board as the practice of geology.

002.01R Professional geologist means a geologist who has a current certificate of licensure issued by the Board.

002.01S Registration (or licensure) means a certificate of registration (or licensure) issued by the Board. For the purposes of the Geologists Regulation Act, license and registration have the same meaning.

002.01T Responsible charge means direct control, direction, and personal supervision by use of initiative and independent judgment for geological work.

002.01U Technical submissions mean designs, drawings, specifications, studies, and other technical reports.

**003 Fees, Renewals, Late Payment Penalties**

003.01 The fee schedule and methods of payment shall be set by the Board. All fees are non-refundable.

003.02 The licensing fees for each approved professional geologist apply to the calendar year in which they are approved by the Board. The renewal fee applies to the next calendar year.

003.03 Certificates of licensure as a professional geologist shall expire at midnight on December 31 of each year, but may be renewed during the following year upon payment of a penalty. The fee to be paid for the renewal of a certificate after December 31 shall be increased ten percent for each month or fraction of a month that the payment is delinquent. The maximum fee and penalty for a delinquent renewal shall not exceed twice the amount of the regular renewal fee and no renewal shall be made after one year from the original expiration date. A new application will be required after that date.

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

003.04 The fees shall be adjusted as needed to generate the revenue needed to administer the Nebraska Geologists Regulation Act. Adjustments to fees shall be set by action of the Board at a regular meeting.

003.05 Submittal of an application authorizes the Board to investigate the information provided on or appended to the application.

**Enabling Legislation**

Neb. Rev. Stat. § 81-3501, 81-3503 to 81-3519, 81-3522

**Legal Citation**

Title 171, Ch. 1, Nebraska Board of Geologists

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

## **CHAPTER 2 - ORGANIZATION, RESPONSIBILITIES, AND DUTIES OF THE BOARD**

### **001 Election of Officers**

001.01 The Board shall annually elect from its own membership at the first meeting after March 1, a chairperson, a vice-chairperson, and a secretary (Officers) who shall assume the duties of their offices at the close of the meeting at which they are elected and serve for a term of one year. If an officer resigns or vacates his or her position prior to the expiration of his or her term, the Board may elect a replacement to serve the remainder of the term of office.

### **002 Duties of Officers**

002.01 The chairperson shall set the time and place of all meetings. When present, the chairperson shall preside at all meetings although at hearings, the chairperson may designate an attorney or another Board officer to preside at the hearing. The chairperson shall sign all original licenses issued, and perform all other duties ordinarily pertaining to the office of chairperson. The chairperson shall assist the secretary in matters of advice and in preparation of correspondence and reports as agreed upon by the Board.

002.02 The vice-chairperson shall perform all the duties prescribed for the chairperson in the absence of the chairperson. The vice-chairperson shall assist the secretary in matters of advice and in preparation of correspondence and reports as agreed upon by the Board.

002.03 The secretary shall, with the assistance of such staff as may be required, prepare the annual report of the Board, cause the same to be distributed as the Board may direct, conduct and care for all the correspondence of the Board, sign and keep the minutes of all meetings, keep all books and records as herein provided, sign fiscal documents, and assure that meetings are properly noticed. The secretary shall publish a complete roster showing the names and last known addresses of all professional geologists annually. This roster shall be filed with the Secretary of State and a copy filed with the Conservation and Survey Division of the University of Nebraska-Lincoln. The secretary shall receive all monies due to the Board, and ensure they are deposited with the State Treasurer.

### **003 Meetings of the Board**

003.01 The Board shall hold at least one regular business meeting each year. The chairperson, the vice-chairperson, or any four members may call additional meetings to conduct the business of the Board. All meetings shall be conducted under the open meeting statutes of the State of Nebraska, Neb. Rev. Stat. § 84-1408 to 84-1414. All meetings shall be open to the public and shall be advertised in a newspaper in general circulation in Nebraska at least seven calendar days prior to a meeting date. The Board may go into executive session pursuant to Neb. Rev. Stat. § 84-1410.

003.02 Written meeting minutes are available in the Board office for public inspection during normal business hours. The public may examine them and take notes from the minutes free of

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

charge. A certified copy of the minutes will be provided upon request and payment of the legal fee. A non-certified copy of the minutes will be provided upon request and payment of actual (copying) costs.

**004 Quorum**

004.01 Five members shall constitute a quorum, but a simple majority of the Board is needed to take action. In the event of an emergency meeting, presence for quorum or majority purposes includes attendance via conference call.

**005 Responsibilities and Duties of the Board**

005.01 The Board shall determine if an applicant for certification as a professional geologist has satisfied all the requirements required by the Act and these rules. This determination shall require a majority vote of the Board.

005.02 The Board may name a member of the office staff and/or other individuals as its designee(s).

005.03 The Board or its designee(s) shall maintain a current list of all states, territories, or possessions of the United States, the District of Columbia, and foreign countries in which the requirements and qualifications for certification and licensure are comparable to those established in the State of Nebraska and where reciprocity or comity may apply.

005.04 The Board or its designee(s) shall prepare or have prepared information suitable to inform the public as to the regulatory functions of the Board and the procedures by which complaints are filed and resolved.

005.05 The Board or its designee(s) shall prepare and maintain an up-to-date roster showing the names, addresses, and telephone numbers, and other contact information of all geologists-in-training and professional geologists in Nebraska. This information shall be placed on file with the Secretary of State.

005.06 Mailing labels or lists of licensees or prospective licensees may be issued at the discretion of the Board for a fee set by the Board.

005.07 The Board may establish standards and procedures to evaluate and recognize geologic specialties. Standards and procedures for specialty licensure may be established as deemed prudent to protect public welfare or safeguard life, health, property, and the environment, under the provisions of the Act.

005.08 The Board may not promulgate rules restricting the use of the terms:

005.08A "Certified Professional Geologist" or "C.P.G." as used by the American Institute of Professional Geologists; or



## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

005.08B "Certified Petroleum Geologist" or "C.P.G." as used by the American Association of Petroleum Geologists-Division of Professional Affairs; or

005.08C "Certified Ground Water Professional" "C.G.W.P." as used by the National Groundwater Association.

005.08D Provided that the full name of the organizations granting the certifications in (a), (b), and (c) are stated following the use of these terms, and that these terms are not used in such a manner that they tend to, or are likely to, create any impression with the public or any member thereof, that the individual is a professional geologist as defined by 003.01M of Chapter 1 of these rules.

005.09 The Board or its designee(s) shall maintain a file of all applications for certification as a professional geologist. The files shall include: 1) Original application; 2) Educational transcripts; 3) Professional references; 4) Examination results; 5) Other such information as may be deemed necessary by the Board.

005.10 Files related to non-approved applicants may be held separate from files of approved licensees.

005.11 Records denoted in Neb. Rev. Stat. § 84-712.05 shall be considered confidential.

005.12 The Board shall have an official seal which shall be used on all licensure documents issued by the Board, and on other official business documents of the Board. The official seal of the Board shall be of a design approved by the Board.

005.13 Upon written request from a licensee, the Board shall provide to another state, jurisdiction, or country, a verification of a licensee's status. This verification may include: 1) License number; 2) Date of licensure; 3) Current status of license; 4) Final disciplinary dispositions; 5) Type(s) of degree(s) and date(s) awarded; 6) Basis of licensure; (i.e., grandfather clause, examination(s) date(s) and minimum passing score(s), or comity or reciprocity.

### **006 Qualifications and Replacement of Board Members**

006.01 Each member of the board shall be a citizen of the United States and a resident of the State of Nebraska for at least one year immediately preceding his or her appointment. Each professional member shall have been engaged in the active practice of geology for at least ten years, and shall have had responsible charge of work for at least five years at the time of his or her appointment. Each professional member of the board shall be licensed in geology in the State of Nebraska. The membership of the Board shall include one public member appointed by the Governor.

006.02 The qualifications of the Education Member are the same as for other professional members, except that he or she must also be a member of the faculty of one of the geology departments of the University of Nebraska, including the Conservation and Survey Division, and must be recommended to the Governor by the president of the University.

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

006.03 A Board Member serves until, after expiration of his/her term, a successor is duly appointed and qualified. The Governor may remove any member of the Board for misconduct, incompetence, or neglect of duty. In case of a resignation, the resigning Board Member must write a formal letter of resignation to the Governor, with a copy going to the chairperson.

006.04 Nominations to fill any vacant seat may be solicited through a process which invites comments from the concerned public and from the geologic profession. Nominations should be sought from representative groups including, but not restricted to, the Nebraska Geological Society and other professional organizations, private industry, and state and federal agencies.

### **Enabling Legislation**

Neb. Rev. Stat. § 81-3520, 81-3521, 81-3522, 81-3523, 84-1408 to 84-1414, and 84-712.05

### **Legal Citation**

Title 171, Ch. 2, Nebraska Board of Geologists

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

## **CHAPTER 3 - LICENSURE PROVISIONS**

### **001 Application Requirements for Licensure as a Professional Geologist**

001.01 Applicants for licensure as a professional geologist shall complete application forms prescribed by the Board, which shall contain notarized statements that demonstrate the applicant has met all the general requirements for licensure. In addition, the applicants shall:

001.01A Include the appropriate fee(s) along with the application; and

001.01B Provide the names and addresses of not less than four references who are not relatives or subordinate employees of the applicant and who can attest to the applicant's professional character, reputation and qualifications. Two or more of the references shall be professional geologists or qualified geologists having personal knowledge of the applicant's geologic work experience. No member(s) of the Board will be accepted as references. Individuals providing references must return the completed forms directly to the Board; and

001.01C Arrange to have the registrars of colleges, universities, or other educational institutions send official or certified transcripts of course work, grades, and degrees directly or provide original transcripts, with certification or seal attached, to the Board. The applicant must have completed at least thirty semester or forty-five quarter hours of course work in geology and received a baccalaureate or advanced degree in geology or a geologic specialty from an accredited program recognized by the Board. Course work shall include five of the following courses or their equivalent: 1) field geology, 2) physical geology, 3) mineralogy, 4) petrology/petrography, 5) structural geology, 6) stratigraphy/sedimentology/soils, or 7) hydrogeology. The applicant must have grade(s) of C or better in the required courses; and

001.01D Document a minimum of five years progressive experience obtained subsequent to completion of the education requirements. The applicant must summarize all geological and related professional work experience and provide the names and addresses of supervisors or, in the case of consulting work, clients. If an applicant cannot provide the name and address of at least one supervisor or client, an applicant shall provide a written and signed explanation and the name and address of one additional professional reference. This additional professional reference shall not be a relative or subordinate employee of the applicant.

001.02 Criteria for the Board to consider in determining geologic work experience to be credited toward the required professional practice in geologic work shall include, but not be limited to:

001.02A Each full-time month of geologic experience that was carried out for a client, under the direct supervision of a professional geologist or qualified geologist, or under another professional who has similar experience, education, and professional character in a related field, shall count as one month of professional practice of geologic work.

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

001.02B Part-time work may be converted to its full-time equivalent, e.g., two months of half-time work equal one month of full-time experience.

001.03 The Board shall evaluate applications that are filled out in their entirety, signed by the applicant, properly notarized, and appended with official or certified transcripts, professional references, and the required fee(s).

001.04 When the Board is satisfied that an application is complete, the Board shall certify the applicant as eligible to take the Association of State Boards of Geology (ASBOG) Fundamentals of Geology (FG) and the Practice of Geology (PG) examinations, or, if exempt from examination, as eligible for licensure.

001.05 If the Board finds that an application does not meet the requirements of the licensing statutes with regard to education, experience, and/or professional character, the application may be denied or additional information required concerning these items. If such additional information, or a request for a time extension and explanation signed by the applicant, is not received within six months of the date of the Board request, the application will be cancelled, and a new application with fee(s) will be required. The Board may reject a request for a time extension. Fees paid are non-refundable.

001.06 The Board shall require an applicant for licensure as a professional geologist to have passed both the ASBOG FG and PG examinations, or their equivalent, unless the applicant is exempt from examination.

**002 Licensure as a Professional Geologist through Reciprocity**

002.01 An applicant who holds a valid license to practice geology in another state, jurisdiction, territory, or country may be granted licensure in Nebraska without examination, if the applicant meets the following criteria:

002.01A Has a current professional geologist license in good standing in another state and provides verification of licensure in a manner deemed acceptable by the Board.

002.01B Submits a completed application form with the appropriate application fee. Transcripts or letters of reference may not be required at this time if the license is in good standing.

002.01C Has passed the ASBOG FG and PG examinations, or their equivalent. The Board may waive the requirement for passing the ASBOG examinations or equivalent, if applicant has continuously held geologist licensure in good standing since December 31, 1991. Such applicants may be asked to submit additional material, including transcripts or letters of reference.

002.01D Meets the Nebraska statutory education requirement: 1) A minimum of thirty semester hours or forty-five quarter hours of course work in geology including the

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

required core courses listed in 001.01C of this chapter and 2) Received a baccalaureate or advanced degree in geology or a geologic specialty.

002.01E Meets the Nebraska statutory requirements for experience, consisting of a documented record of a minimum of five years of progressive experience, obtained subsequent to completion of the education requirements, in geologic work of a grade and character which indicates to the Board that the applicant is qualified to assume responsible charge of such work upon licensure as a professional geologist.

### **003 Temporary License**

003.01 The application form for a temporary license will contain the following information: Licensee's name, requested duration of license, state of current licensure, license number, and project name.

003.02 Verification of good standing must be provided by the state of current licensure, including examination information.

003.03 The license will consist of labels containing the pertinent information, which may be applied to documents or may be copied onto clear media for application to sealed transparencies.

003.04 The holder of a temporary license shall use his or her seal from the state of verified licensure when sealing documents pertaining to the State of Nebraska project and shall accompany the seal with the information label issued by the Board.

### **004 Organizational Practice**

004.01 Application for Certificate of Authorization. Organizations practicing or offering to practice geology in Nebraska shall apply to the Board for a certificate of authorization. The organization shall also pay appropriate application fees. The Board will review the organization's application and issue a Certificate of Authorization if the minimum requirements are satisfied. The term of the certificate is for a period of two years. The certificate is for use only by the organization to indicate that it has satisfied the minimum requirements of the Board to practice or offer to practice the profession of geology in the State of Nebraska. The certificate of authorization shall be used to file any applications with the Nebraska Secretary of State to fulfill the appropriate statutes or requirements for practicing in Nebraska as a corporation, partnership, limited liability corporation, professional corporation or other such organizational designations appropriate under Nebraska law. Sole proprietorships do not require a certificate.

004.02 Minimum Organizational Requirements. The minimum requirement for a corporation, limited liability company, or partnership to practice or offer to practice geology in Nebraska is to have one professional geologist, licensed to practice for the duration of the certificate of authorization. The professional geologist must be licensed to practice in the State of Nebraska, must be a full-time employee of the organization, and may or may not have ownership interest in the organization. The signature of a professional geologist licensed in the State of Nebraska must appear on the organization application. Should any licensed professional who has signed the application leave the organization, become deceased, or lose their signatory authority, the organization shall notify

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

the Board within thirty days and file an amendment to its application identifying the new licensed individual with signatory authority.

**005 Examinations**

005.01 The examinations shall be given in two sections, the Association of State Boards of Geology (ASBOG) Fundamentals of Geology (FG) exam, and the Practice of Geology (PG) exam. The FG examination may be taken six months prior to graduation with the baccalaureate degree, or at any time following completion of the baccalaureate degree. The PG examination may be taken only after the applicant has acquired the experience required for licensure as a professional geologist. Examinations will be given at times and places determined by the Board. Completed application forms for the FG or PG examinations must be filed with the Board according to dates established by the Board.

005.02 If the Board has not approved an application for licensure as a professional geologist by the cutoff date for an examination, the application will be processed for the next Board examination.

005.03 When an applicant has paid the proper fee, but is unable to take the scheduled examination, all fees paid will be forfeited.

005.04 The Board may deny admittance to an examination for any of the following reasons: 1) The fee is not received on or before the date specified by the Board; 2) An applicant fails to provide a completed application form; or 3) The applicant does not present an acceptable form of photo identification such as a current state-issued driver's license, passport, or other type of governmental identification.

005.05 Within seventy-five calendar days after the day on which an examination is administered, the Board or its designee(s) shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board or its designee(s) shall notify examinees of the results of the examination within fifteen working days after the day that the Board or its designee(s) receives the results from the testing service. If notice of the examination results will be delayed for longer than one hundred and twenty calendar days after the examination date, the Board or its designee(s) shall notify the examinee of the reason for the delay.

005.06 An applicant who fails to achieve a passing score on an examination may apply for reexamination by paying the appropriate reexamination fees. An applicant who fails either the FG or PG examination will retake only the failed examination. If requested in writing by the applicant, the Board or its designee(s) may furnish the applicant with an analysis of the applicant's performance on the failed examination. The applicant shall pay costs associated with appealing exam results. Individual examination results may not be challenged. Applicants who fail examinations may withdraw their application for licensure by written request to the Board.

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

**006 Renewal Procedures**

006.01 The Board or its designee(s) shall notify each licensee of the date of license expiration. Certificates of licensure as a professional geologist shall expire at midnight on December 31 of each year. Such notice shall also: 1) State the fee required for license renewal; 2) Be mailed at least one month in advance of the date of expiration of said license; and 3) Be mailed to the last address that the licensee provided.

006.02 A licensee may renew an unexpired license by prepaying the renewal fee.

006.03 Failure to receive the notice described shall not relieve a licensee of the responsibility for renewing the license before expiration.

006.04 It is a licensee's responsibility to promptly notify the Board in writing of any change of preferred mailing address.

**007 Licensee Seal**

007.01 Upon notification of licensure from the Board, the applicant shall obtain and purchase a seal of the design prescribed by the Board. The Board or its designee(s) may provide a list of vendors who can manufacture and provide seals.

007.02 The seal authorized for licensees may be of the embossing type, a rubber stamp facsimile, or electronic. The seal shall be of the design provided by the Board. The information on the seal shall be State of Nebraska, licensee's name, licensee's license number, and the words Professional Geologist. The seal used by a licensee, whether an embossing, computer generated, or other type shall be legible. In the absence of legibility, the seal is invalid. Documents placed on the internet shall not include a seal unless they also contain an electronic signature protected with an electronic revision approval system.

007.03 Within ninety calendar days from the date of notification of licensure, the applicant must submit to the Board an impression, stamp or electronic facsimile form of the seal superimposed over an original signature.

007.04 An imprint of the licensee's valid seal shall appear on the cover page of geologic reports or other geologic documents bound in book form as well as on each and every original sheet of unbound geologic drawings, cross sections, or maps prepared by or under the responsible charge or direct supervision of the licensee whenever these documents are presented to a client or any public or governmental agency. An imprint of the licensee's seal shall be superimposed over his or her signature and the date on which it was signed.

007.05 Any work sealed and signed by a licensee must have been prepared by that licensee or by someone under the responsible charge or direct supervision of the licensee. After-the-fact ratification by the sealing of documents when the underlying work was not performed by or under the responsible charge and supervision of the licensee, is prohibited.

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

007.06 A licensee whose license is expired shall not use his or her seal on any work until the license is reinstated.

007.07 If a licensee changes his or her name, the licensee shall notify the Board in writing. This notification should be made within thirty calendar days of the name change and should include a statement explaining the reason for the name change. Within ninety calendar days after the licensee's name change, the licensee shall obtain and submit a new seal to the Board.

### **Enabling Legislation**

Neb. Rev. Stat. § 81-3527, 81-3528, 81-3529, 81-3530, 81-3531, 81-3539, 81-3540

### **Legal Citation**

Title 171, Ch. 3, Nebraska Board of Geologists



**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

**Chapter 4 - CODE OF PRACTICE**

001 All licensees shall be guided by the highest standards of personal integrity and professional conduct:

001.01 They shall pursue honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, inviolability of confidence, and honorable conduct.

001.02 By applying for or by continuing licensure or certification, they agree to comply with and uphold this Code of Professional Conduct.

001.03 They shall not discriminate against others on the basis of gender, age, disability, race, color, religion, marital status, national or ethnic origin, or sexual orientation.

002 Licensees shall uphold public health, safety, and welfare in the performance of professional services, and avoid even the appearance of impropriety.

002.01 They shall observe and comply with the requirements and intent of all applicable laws, codes, and regulations.

002.02 They shall not knowingly participate in any illegal activities, or knowingly permit the publication of their reports, maps, or other documents for an illegal purpose.

002.03 They shall neither offer nor make any illegal payment, gift, or other valuable consideration to a public official for the purpose of influencing a decision by such official; nor shall they accept any payment, gift, or other valuable consideration which would appear to influence a decision made on behalf of the public by them acting in a position of public trust.

002.04 If they become aware of a decision or action by an employer, client, or colleague which violates any law or regulation, they shall advise against such action, and when such violation appears to adversely affect public welfare or the safeguard of life, health, property and the environment, they shall advise the appropriate public officials responsible for the enforcement of such law or regulation.

002.05 They shall be accurate, truthful, and candid in all communications with the public.

002.06 They shall not knowingly engage in false or deceptive advertising, or make false, misleading, or deceptive representations or claims in regard to the profession of geology, their own professional qualifications or abilities, or those of other geologists.

002.07 They shall not issue statements or information which they know to be false or misleading even though directed to do so by an employer or client.

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

002.08 They shall avoid making sensational, exaggerated, and/or unwarranted statements that may mislead or deceive members of the public or any public body.

002.09 They should participate as citizens and as professionals in public affairs.

002.10 Licensees acting in a position of public trust shall exercise their authority impartially, and shall not seek to use their authority for personal profit or to secure any competitive advantage.

002.11 They shall promote public awareness of the effects of geology and geological processes on the quality of life.

003 Licensees shall serve their employers and clients faithfully and competently within their overall professional obligations.

003.01 They shall disclose any actual or potential conflicts of interest, which may affect their ability to faithfully serve an employer or client.

003.02 They shall disclose to a prospective employer or client the existence of any owned or controlled mineral or other interest which may, either directly or indirectly, have a bearing on such employment.

003.03 Licensees having or expecting to have beneficial interest in a property on which they report shall state the existence of such interest or expected interest in the report.

003.04 Licensees employed or retained by one employer or client shall not accept, without that employer's or client's written consent, an engagement by another if the interests of the two are in any manner conflicting.

003.05 They shall not accept referral fees from any person to whom an employer or client is referred; however, nothing herein shall prohibit them from being compensated by the employer or client for consultation, or for other services actually performed.

003.06 They shall not offer or pay referral fees to any person who refers an employer or client to them; however, nothing herein shall prohibit them from compensating the person giving the referral for consultation or for other services actually performed.

003.07 They shall protect, to the fullest possible extent, the interest of an employer or client in a manner that is consistent with public welfare or the safeguard of life, health, property and the environment and the licensee's legal, professional, and ethical obligations.

003.08 They shall not use, directly or indirectly, any confidential information obtained from services for an employer or client which is adverse or detrimental to the interests of the employer or client, except with the prior consent of the employer or client, or when disclosure is required by law.

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

003.09 A licensee who has made an investigation for an employer or client shall not seek to profit economically from the information gained without written permission of the employer or client, unless it is clear that there can no longer be a conflict of interest with the original employer or client.

003.10 They shall not use their employer or client's resources for private gain without their employer's or client's prior knowledge and consent.

004 Licensees shall provide competent service to their employers and clients.

004.01 They shall perform only professional services or issue only professional advice which is within the scope of their education and experience, and that of their professional associates, consultants, or employees, and shall advise the employer or client of professional advice outside of their personal expertise.

004.02 They shall not give a professional opinion, or submit a report, without being as thoroughly informed as might be reasonably expected, considering the purpose for which the opinion or report is requested.

004.03 They shall engage, or advise an employer or client to engage, and cooperate with other experts and specialists whenever the employer's or client's interest would be best served by such engagement.

004.04 They shall serve their employers and clients diligently and perform their services in a timely manner.

004.05 Licensees who find that obligations to an employer or client conflict with professional or ethical standards should have such objectionable conditions corrected or they should resign.

005 Licensees shall respect the rights, interests, and contributions of their professional colleagues.

005.01 They shall respect and acknowledge the professional status and contributions of their colleagues.

005.02 They shall give due credit for work done by others in the course of a professional assignment, and shall not knowingly accept credit due another.

005.03 They shall not plagiarize another in oral or written communications, use materials prepared by others without appropriate attribution, or make use of the intellectual property of another without appropriate attribution.

006 Licensees shall continually strive to improve the profession of geology .

006.01 They shall strive to improve their professional knowledge and skills.

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

006.02 They shall cooperate with others in the profession and encourage the dissemination of geological knowledge.

006.03 They shall work toward the improvement of standards of geological education, research, training, and practice.

006.04 They shall uphold these standards of professional conduct by precept and example, but also encourage by counsel and advice to other licensees their adherence to such standards.

006.05 Licensees having knowledge of another licensee violating the Act, the rules of the Board, or this code of professional conduct should bring substantial evidence of such violation to the attention of the Board.

### **Enabling Legislation**

Neb. Rev. Stat. § 81-3526

### **Legal Citation**

Title 171, Ch. 4, Nebraska Board of Geologists

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

## **CHAPTER 5 - ENFORCEMENT OF ACT**

### **001 Authority of Board**

001.01 The Board shall enforce the Geologist Regulation Act, including enforcement against any unlicensed person. If any person refuses to obey any decision or order of the Board, upon the request of the Board, the Attorney General or the appropriate county attorney shall file an action for the enforcement of the decision or order, including injunctive relief, in the district court. After a hearing, the court shall order enforcement of the decision or order or any part thereof, if legally and properly made by the Board and, if appropriate, injunctive relief.

### **002 Practice of Geology Restrictions**

002.01 Except as provided in Neb. Rev. Stat. § 81-3539 to 81-3541, an individual shall not directly or indirectly engage in the practice of geology in the State or use the title Professional Geologist or display or use any works, letters, figures, titles, sign, card, advertisement, or other symbol or device indicating or tending to indicate that he or she is a geologist or is practicing geology unless he or she is licensed under the Geologist Regulation Act. A licensed geologist shall not aid or abet any person not licensed under the Act in the practice of geology.

### **003 Prohibited Acts; Penalties**

003.01 A person who performs any of the following actions is guilty of a Class II misdemeanor for the first offense and a Class I misdemeanor for the second or any subsequent offense:

003.01A Practices or offers to practice geology in this State without being licensed in accordance with the Geologist Regulation Act and is not exempted by Neb. Rev. Stat. § 81-3539 to 81-3541.

003.01B Knowingly and willfully employs or retains a person to practice geology in this State who is not licensed in accordance with the Act and who is not exempted by Neb. Rev. Stat. § 81-3539 to 81-3541.

003.01C Uses the word Geologist, or any modification or derivative of such word, in its name or form of business activity except as authorized in the Act.

003.01D Presents or attempts to use the certificate of licensure or the seal of another person.

003.01E Gives any false or forged evidence of any kind to the Board or to any member of the Board in obtaining or attempting to obtain a certificate of authorization.

003.01F Falsely impersonates any other licensee of like or different name.

003.01G Attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure; or practices, or offers to practice, when not qualified.

## NEBRASKA ADMINISTRATIVE CODE

Title 171 - Nebraska Board of Geologists

Effective Date:

003.01H Falsely claims that he or she is licensed or authorized under the Act.

003.01I Violates any of the provisions of the Act.

### **004 Violation of Act; Charges; Board; Duties; Hearing; Informal Process**

004.01 Charges against a person involving any matter coming within the jurisdiction of the Board shall be in writing and shall be filed with the Board. The name and address of the licensee; name, address and telephone number of the complainant; nature of alleged violation(s); and signature of the complainant must be included. The Board may refer the complaint to an investigative panel or investigator, with the exception that no member of the Board may serve on the investigative panel or as an investigator. The panel or the investigator makes a determination and/or a recommendation as to:

004.01A Whether the charge should be pursued.

004.01B If an informal process or mediation should be used.

004.01C If further investigation is required.

004.01D If probable cause exists for taking further action or for issuing a summons and complaint to initiate the formal process.

004.01E Action against the person may be brought in the name of the Board or brought before the Board in the name of the complainant vs. the respondent.

004.02 The Board may wish to select an "informal legal process" in lieu of or as a prerequisite to entering into a "formal legal process". Under this option, the Board would generally follow these steps after receiving a written complaint that an individual or organization has violated the Geologist Regulation Act.

004.02A The Board sends a letter to any or all of the parties involved in the complaint, requesting that they attend a Board meeting to informally discuss matters related to the complaint.

004.02B At the scheduled meeting with the Board, the Board shall clearly state to the parties that the meeting is informal and that no individuals or organizations will be giving up their "due process rights" by participating in the "informal process". The Board may request that parties bring materials, documents, or exhibits that might be useful in facilitating the informal discussion with the Board.

004.02C If the Board and the parties can reach a mutual understanding that any alleged violations of the Act in the complaint can easily be corrected through "education" and applied properly in future activities of the parties, then the Board may consider the complaint to be resolved. Under this process the Board is looking to the party or parties

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

named in the complaint to take their own corrective actions to establish compliance with the Act.

004.02D The Board retains the authority to separate items within a complaint into those that can be resolved with the "informal process" and those of a more serious nature which must be resolved under the "formal legal process".

004.02E Matters resolved through the "informal process" will be so acknowledged in writing to all parties who participated in the process.

004.03 Mediation. At the request of either party, the complaint shall be referred to a state-approved mediation center for resolution pursuant to the Nebraska Dispute Resolution Act.

### 004.04 Formal Legal Process

004.04A Prohibitions against ex parte communications.

004.04A1 Prohibitions; when applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given. The Board may designate an earlier time, but such earlier time shall be required to be set forth in the Board's rules of procedure.

004.04A2 Prohibitions; to whom applicable.

004.04A2(a) Parties and public. No party in a contested case or other person outside the Board having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to a Board member who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

004.04A2(b) Persons in decisionmaking roles. No hearing officer or Board member who is or may reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the Board having an interest in the contested case.

004.04A2(c) Investigators. No Board member engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or Board member who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

004.04A3 Disclosure of contacts. The hearing officer or Board member who is or may reasonably be expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 004.04A2(a) through 004.04A2(c) shall file in the record of the contested case:

004.04A3(a) All such written communications;

004.04A3(b) Memoranda stating the substance of all such oral communications; and

004.04A3(c) All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

004.04A3(d) The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

004.04A3(e) Filing and notice of filing provided under subsection 004.04A3(d) shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

004.04B Intervention in a contested case.

004.04B1 Intervention in a contested case shall be allowed when the following requirements are met:

004.04B1(a) A petition for intervention must be submitted in writing to the hearing officer or designee at least five days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

004.04B1(b) The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

004.04B1(c) The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

004.04B2 The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.



## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

004.04B3 If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

004.04B3(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

004.04B3(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

004.04B3(c) Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

004.04B4 The hearing officer or designee, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

004.04B4(a) The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

004.04B4(b) The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

004.04C Commencement of a contested case.

004.04C1 The contested case begins with the filing of a petition and request for hearing, if applicable, with the Board. The petition is the initial document filed by or with the Board that sets forth a claim and request for Board action.

004.04C2 The parties to a contested case shall be the petitioner or person by whom a contested case is brought and the respondent or person against whom a contested case is brought.

004.04C3 A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

004.04C4 The pleadings in a contested case may include a petition, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before the Board. Any pleading filed in a contested case shall meet the following requirements:

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

004.04C4 (a) The pleading shall contain a heading specifying the name of the Board and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Board is being requested to take, shall contain the name and address of the petitioner, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney.

004.04C4(a)1 Attorneys shall also include their address, telephone number and bar number.

004.04C4(a)2 The initial petition shall also contain the name and address of the respondent.

004.04C4(b) All pleadings shall be made on white, lettersized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.04C5 All pleadings shall be filed with the Board at its office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Board.

004.04C6 The Board shall serve a copy of the petition on each respondent listed in the petition personally or by first class or certified mail. Written proof of such service shall be filed with the Board. Each respondent who chooses to file a responsive pleading must do so within 20 days from the date of personal service or the date of Board mailing of the petition.

004.04C7 All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the Board.

004.04C8 Unless state law provides that a hearing is not required, a hearing date shall be set by the Board in accordance with statutory requirements. A written notice of the time and place of hearing and the name of the hearing officer, if known, shall be served by the Board upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the Board.

004.04C9 In computing time prescribed or allowed by Chapter 4 of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

### 004.04D Hearing officer; criteria.

004.04D1 The Board may delegate to a hearing officer other than the members of the Board the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Board.

004.04D2 A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 004.04D(4).

004.04D3 A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 004.04D(4).

004.04D4 If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

004.04D5 A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

004.04D6 A person may serve as hearing officer at successive stages of the same contested case.

### 004.04E Prehearing Procedures.

004.04E1 Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, subject to the Board's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

#### 004.04E1(a) If a prehearing conference is conducted:

004.04E1(a)1 The hearing officer shall promptly notify the Board of the determination that a prehearing conference will be conducted. The Board may assign another hearing officer for the prehearing conference; and

## NEBRASKA ADMINISTRATIVE CODE

Title 171 - Nebraska Board of Geologists

Effective Date:

004.04E1(a)2 The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The Board shall give notice to other persons entitled to notice.

004.04E1(a)3 The notice referred to in subsection 004.04E2(b) shall include the following:

004.04E1(a)3A The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

004.04E1(a)3B The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Board;

004.04E1(a)3C The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

004.04E1(a)3D A statement of the time, place, and nature of the prehearing conference;

004.04E1(a)3E A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

004.04E1(a)3F The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

004.04E1(a)3G A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

004.04E1(a)3H Any other matters that the hearing officer considers desirable to expedite the proceedings.

004.04E1(b) The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to

## NEBRASKA ADMINISTRATIVE CODE

Title 171 - Nebraska Board of Geologists

Effective Date:

proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

004.04E1(c) The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

### 004.04E2 Discovery in contested cases.

004.04E2(a) The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

004.04E2(b) Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

004.04E2(b)1 Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

004.04E2(b)2 State the reasons supporting the motion;

004.04E2(b)3 Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

004.04E2(b)4 Be filed with the Board. The moving party must serve copies of all such motions to all parties to the contested case.

004.04E2(c) Other than is provided in subsection 004.04E2(b)4 above, discovery materials need not be filed with the Board.

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

004.04E3 Continuances. The hearing officer may, at his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

004.04E3(a) Good cause. Good cause for an extension of time or continuance may include, but is not limited to, the following:

004.04E3(a)1 Illness of the party, legal counsel or witness;

004.04E3(a)2 A change in legal representation; or

004.04E3(a)3 Settlement negotiations are underway.

004.04E4 Amendments.

004.04E4(a) A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, a petitioner must request permission to amend from the hearing officer.

004.04E4(b) A hearing officer may also allow, at his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

004.04E5 Informal Disposition. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

004.04F Conducting a contested case hearing.

004.04F1 Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

004.04F1(a) The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

004.04F1(b) Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

004.04F1(c) Presentation of evidence.

**NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

004.04F1(c)1 Evidence will be received in the following order:

004.04F1(c)1A Evidence is presented by the petitioner;

004.04F1(c)1B Evidence is presented by the respondent;

004.04F1(c)1C Rebuttal evidence is presented by the petitioner; and

004.04F1(c)1D Surrebuttal evidence is presented by the respondent.

004.04F1(c)2 With regard to each witness who testifies, the following examination may be conducted:

004.04F1(c)2A Direct examination conducted by the party who calls the witness;

004.04F1(c)2B Cross-examination by the opposing party;

004.04F1(c)2C Redirect examination by the party who called the witness; and

004.04F1(c)2D Recross-examination by the opposing party.

004.04F(1)d After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.

004.04F2 Evidence.

004.04F2(a) In contested cases the Board or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

004.04F2(b) Any party to a formal hearing before the Board, from which a decision may be appealed to the courts of this state, may request that the Board be bound by the rules of evidence applicable in district court by delivering to the Board at least three days prior to the holding of the

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

004.04F2(c) Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

004.04F2(d) All evidence including records and documents in the possession of the Board of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

004.04F2(e) A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

004.04F2(f) The Board shall give effect to the rules of privilege recognized by law.

004.04F2(g) The Board may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Board.

004.04F2(g)1 Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

004.04F2(g)2 Parties shall be afforded an opportunity to contest facts so noticed.

004.04F2(g)3 The record shall contain a written record of everything officially noticed.

004.04F2(g) The Board may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

004.04F3 Conducting the hearing by electronic means. The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to



## NEBRASKA ADMINISTRATIVE CODE

Title 171 - Nebraska Board of Geologists

Effective Date:

hear, and, if technically feasible, to see the entire proceeding while it is taking place.

### 004.04F4 Official record.

004.04F4(a) The Board shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the Board upon request and tender of the cost of preparation.

004.04F4(b) The Board shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

004.04F4(c) The Board record shall consist only of the following:

004.04F4(c)1 Notices of all proceedings;

004.04F4(c)2 Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board pertaining to the contested case;

004.04F4(c)3 The record of the hearing before the Board, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Board during the proceeding, and all proffers of proof and objections and rulings thereon; and

004.04F4(c)4 The final order.

004.04F4(d) As provided in 53 NAC 4 Section 002.03 the hearing officer, Board member, or employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

004.04F4(e) Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Board record shall constitute the exclusive basis for Board action in contested cases under the act and for judicial review thereof.

## **NEBRASKA ADMINISTRATIVE CODE**

Title 171 - Nebraska Board of Geologists

Effective Date:

004.04F5 Costs. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

004.04G Decision and order in a contested case.

004.04G1 Every decision and order adverse to a party to the proceeding, rendered by the Board in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

004.04G2 The decision and order should include:

004.04G2(a) The name of the Board and name of the proceeding;

004.04G2(b) The time and place of the hearing;

004.04G2(c) The names of all parties or their attorneys who entered an appearance at the hearing;

004.04G2(d) The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

004.04G2(e) The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

004.04G2(f) The order consisting of the action taken by the Board as a result of the facts found and the legal conclusions arising therefrom.

004.04G3 Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

004.04H Appeals.

004.04H1 Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

004.04H2 Parties desiring to appeal a Board decision must file a petition for review in the district court of the county where the Board action is taken within thirty days after the service of the final decision by the Board. The thirty day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

004.04H3 Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. § 84-917 govern the procedure for taking an appeal.

**005 Violation of Act; Disciplinary Action; Penalties**

005.01 The Board may by majority vote, after the hearing, take any or all of the following actions, upon proof satisfactory to the Board that any person or organization has violated the Geologist Regulation Act or any rules or regulations adopted and promulgated pursuant to the Act:

005.01A Issuance of censure or reprimand.

005.01B Suspension of judgement.

005.01C Placement of the offender on probation with the Board.

005.01D Placement of a limitation or limitations on the holder of a license and upon the right of the holder of a license to practice the profession to such extent, scope or type of practice for such time and under such conditions as are found necessary and proper.

005.01E Imposition of a civil penalty not to exceed \$10,000 (ten thousand dollars) based on the severity of the violation.

005.01F Entrance of an order of revocation, suspension, or cancellation of the certificate of licensure.

005.01G Issuance of a cease and desist order.

005.01H Imposition of costs as in an ordinary civil action in the district court, which may include attorney(s) fees; hearing officer fees incurred by the Board; and investigation expenses incurred by the Board.

005.01I Dismissal of the action. In hearings under this section, the Board may take into account suitable evidence of reform.

005.02 Civil penalties collected under subdivision (a)(v) of this section shall be remitted to the State Treasurer for credit to the permanent school fund. All costs collected under subdivision (a)(viii) of this section shall be remitted to the State Treasurer for credit to the Geologist Regulation fund.

**Enabling Legislation**

Neb. Rev. Stat. § 81-3533, 81-3534, 81-3535, 81-3536, 81-3537, 81-3539, 81-3540, 81-3541

**Legal Citation**

Title 171, Ch. 5, Nebraska Board of Geologists

**NEBRASKA ADMINISTRATIVE CODE**  
Title 171 - Nebraska Board of Geologists  
Effective Date:

## **CHAPTER 6 - INFORMATION PRACTICES**

### **001 Introduction**

001.01 Pursuant to Neb. Rev. Stat. § 84-712.05 or as otherwise provided by law, the Board establishes these rules to ensure the security, confidentiality, and privacy of personal information concerning individuals licensed or certified pursuant to the Act.

### **002 Disclosure**

002.01 With the exceptions of information required in the Board's roster and information listed in 002.03 of Chapter 2 of these rules, the personal information compiled by the Board concerning each licensee or those individuals in the application process is confidential and shall be released only to the individual to whom the record pertains, to others with his or her written consent, or upon court order. Disclosure of confidential records and public records shall also be governed by Neb. Rev. Stat. § 84-712.05, or as otherwise provided by law.

### **003 Access**

003.01 A licensee or an individual in the application process may personally inspect the contents of his or her file with the following exceptions:

003.01A Examination materials and individual grade sheets; and

003.01B Professional references.

003.02 Original documents must remain with the Board but may be copied at the Board's office for a reasonable fee.

### **004 Correction and Amendment**

004.01 A licensee or an individual in the application process may correct erroneous, inaccurate, or misleading information in his or her file by providing the corrections and amendments in writing to the Board.

### **Enabling Legislation**

Neb. Rev. Stat. § 84-712.05

### **Legal Citation**

Title 171, Ch. 6, Nebraska Board of Geologists